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FILED
ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT

By Pam Williams
Deputy

10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF ALAMEDA

13 **PEOPLE OF THE STATE OF CALIFORNIA, ex**
14 **rel. EDWIN F. LOWRY, Director, CALIFORNIA**
15 **DEPARTMENT OF TOXIC SUBSTANCES**
CONTROL,

16 Plaintiff,

17 v.

18 **PACIFIC AEROSPACE SERVICES, INC., a**
19 **California Corporation; and JOHN WAXLER, an**
Individual,

20 Defendant.

Case No. RG04161958

CONSENT JUDGMENT

21
22 Plaintiff the People of the State of California, ex rel. Maureen F. Gorsen (as successor to
23 Edwin F. Lowry), Director, Department of Toxic Substances Control ("DTSC"), and defendants
24 John Waxler and Pacific Aerospace Services, Inc. ("Defendants") hereby enter into a settlement
25 of this matter and stipulate to judgment as follows:

26 **THE COMPLAINT**

27 1. On June 22, 2004, DTSC filed a complaint, and on March 18, 2005, filed an
28 Amended Complaint, seeking civil penalties against Defendants pursuant to California Health

1 and Safety Code sections 25189 and 25189.2 for violations of the Hazardous Waste Control Law
2 ("HWCL") (Health & Saf. Code, § 25100 et seq.) and its implementing regulations (Cal. Code
3 Regs, tit. 22, § 66260.1 et seq.), which govern hazardous waste storage, transportation, treatment,
4 and disposal.

5 2. The Amended Complaint alleges that Defendants violated provisions of the
6 HWCL and California Code of Regulations with respect to handling, storage, and treatment of
7 hazardous waste at the Pacific Aerospace Services, Inc. facility at 354 McGlincey Lane,
8 Campbell, California ("Facility").

9 **JURISDICTION AND VENUE**

10 3. DTSC and Defendants hereby agree that the Superior Court for the County of
11 Alameda has subject matter jurisdiction over the matters alleged in this action and personal
12 jurisdiction over the parties to this Consent Judgment and that venue is proper in this Court.

13 **STIPULATION FOR SETTLEMENT**

14 4. DTSC and Defendants hereby enter into this Consent Judgment pursuant to a
15 compromise and settlement of disputed claims for the purpose of avoiding prolonged and
16 complicated litigation and furthering the public interest. Further, DTSC and Defendants hereby
17 request this Court to enter judgment as provided herein.

18 **WAIVER OF HEARING AND TRIAL**

19 5. By signing and entering into this Consent Judgment, Defendants waive any right
20 to a hearing and/or trial with respect to the matters specifically set forth in paragraph 14 of this
21 Consent Judgment.

22 **CORRECTIVE ACTION**

23 6. In order to perform clean closure of the Facility, Defendants agree to follow the
24 Corrective Action Requirements attached hereto as Exhibit A and incorporated into this Consent
25 Judgment by reference.

26 **CONTINUATION OF INJUNCTION**

27 7. The prohibitions contained in paragraphs 1 and 2 of the "Stipulated Consent
28 Decree for Preliminary Injunction" entered by the Court on July 15, 2005, shall continue in effect

1 after the entry of this Consent Judgment.

2 **RESTRICTION ON CERTAIN ACTIVITIES**

3 8. During the period of time beginning on the Effective Date of this Consent
4 Judgment and continuing uninterrupted thereafter for five years, defendant John Waxler agrees
5 that he will not hold a position in which he would have the responsibility to control, oversee, or
6 direct any "hazardous waste management," as defined in Health and Safety Code section
7 25117.2. Notwithstanding the foregoing, this Consent Judgment shall not be interpreted to
8 prohibit John Waxler from being employed for wages by a facility that generates hazardous
9 waste, provided that his job duties do not include the responsibility to control, oversee, or direct
10 "hazardous waste management," as defined in Health and Safety Code section 25117.2, at that
11 facility. The restrictions contained in this paragraph do not apply to any work conducted by John
12 Waxler in compliance with the Corrective Action Requirements attached hereto as Exhibit A.

13 **PAYMENT OF STIPULATED JUDGMENT**

14 9. Defendants hereby stipulate to the entry of judgment against them jointly and
15 severally in the amount of one hundred fifty thousand dollars (\$150,000.00) payable to DTSC.
16 However, DTSC shall not be entitled to enforce said judgment against Defendants except as
17 described in paragraphs 10 and 11, below.

18 10. If Defendants fail to strictly comply with all of the requirements of this Consent
19 Judgment, including the Corrective Action Requirements attached hereto as Exhibit A, the total
20 sum of one hundred fifty thousand dollars (\$150,000.00) set forth in paragraph 9 above shall be
21 due and owing upon Defendants' receipt of written notification from DTSC that Defendants have
22 failed to comply with this Consent Judgment and the one hundred fifty thousand dollars
23 (\$150,000.00) is due and owing. Thereafter, DTSC may take all necessary actions to enforce the
24 judgment and collect from Defendants. Defendants further agree to pay interest at the rate
25 established pursuant to Health and Safety Code section 25360.1 from the date of the notification
26 described above and to pay all costs incurred by DTSC in pursuing collection, including
27 attorney's fees.

28 11. If, on the date which shall be five years after the Effective Date of this Consent

1 Judgment, Defendants shall have strictly complied with all of the requirements of this Consent
2 Judgment, including the Corrective Action Requirements attached hereto as Exhibit A, DTSC
3 will waive and forgive one hundred forty thousand dollars (\$140,000.00) of the original one-
4 hundred-fifty-thousand-dollar (\$150,000.00) judgment, will not enforce the judgment as to that
5 portion forgiven and waived, and will provide written notification to Defendants that the
6 remaining ten thousand dollars (\$10,000) is at that time due and owing. Thirty (30) days after
7 DTSC provides the notification described in the previous sentence, DTSC will be entitled to
8 enforce the judgment and collect from Defendants the remaining ten thousand dollars (\$10,000)
9 of the original one-hundred-fifty-thousand-dollar (\$150,000.00) judgment. Beginning thirty (30)
10 days from the notification described above in this paragraph Defendants agree to pay interest at
11 the rate established pursuant to Health and Safety Code section 25360.1 on remaining the ten
12 thousand dollars (\$10,000) and to pay all costs incurred by DTSC in pursuing collection,
13 including attorney's fees.

14 12. All payments required by this Consent Judgment shall be made by certified or
15 cashier's check. All checks shall be made payable to DTSC and shall bear the title and case
16 number: "People v. Pacific Aerospace Services, Inc., No. RG04161958, Alameda County
17 Superior Court." All payments shall be sent to:

18 Department of Toxic Substances Control
19 Accounting Office
20 1001 I Street, 21st Floor
21 P.O. Box 806
22 Sacramento, CA 95812-0806
23 Attention: Karen Poon

24 A photocopy of all payments shall be sent to :

25 Charles A. McLaughlin
26 Chief, State Oversight and Enforcement Branch
27 Department of Toxic Substances Control
28 8800 Cal Center Drive
Sacramento, CA 95826

13. DTSC's failure to seek enforcement of any provision of this Consent Judgment
shall not be deemed a waiver of any rights by DTSC, or in any way affect the validity of this
Consent Judgment.

1 **SCOPE OF THIS CONSENT JUDGMENT**

2 14. This Consent Judgment settles only those matters set forth in the Amended
3 Complaint. Nothing in this Consent Judgment shall constitute or be construed as a satisfaction or
4 release from liability for any conditions or claims arising as a result of past, current, or future
5 operations of Defendants except as expressly provided herein. Furthermore, nothing in this
6 Consent Judgment shall constitute or be construed as barring DTSC, or any other regulatory
7 body, from exercising its authority under any law, statute or regulation. Furthermore, nothing in
8 this Consent Judgment is intended nor shall it be construed to preclude any state agency,
9 department, board or entity from exercising its authority under any law, statute, or regulation.

10 **NOTICE**

11 15. All notices and reporting required by this Consent Judgment shall be sent to:
12 DTSC:

13 Charles A. McLaughlin
14 Chief, State Oversight and Enforcement Branch
15 Department of Toxic Substances Control
16 8800 Cal Center Drive
17 Sacramento, CA 95826

18 James J. Grace, Esq.
19 Staff Counsel
20 Department of Toxic Substances Control
21 8800 Cal Center Drive
22 Sacramento, CA 95826

23 Timothy E. Sullivan, Esq.
24 Deputy Attorney General
25 California Department of Justice
26 1515 Clay Street, 20th Floor
27 P.O. Box 70550
28 Oakland, CA 94612-0550

Defendants:

29 John Waxler
30 President, Pacific Aerospace Services, Inc.
31 354 McGlincey Lane
32 Campbell, CA 95008

33 Ralph J. Swanson, Esq.
34 Berliner Cohen
35 10 Almaden Boulevard, 11th Floor
36 San Jose, CA 95113

37 **DTSC NOT LIABLE**

1 16. DTSC shall not be liable for any injury or damage to persons or property resulting
2 from acts or omissions by Defendants in carrying out activities pursuant to this Consent
3 Judgment, nor shall DTSC be held as a party to or guarantor of any contract entered into by
4 Defendants or his agents, representatives, or contractors in carrying out activities required
5 pursuant to this Consent Judgment.

6 **AUTHORITY TO ENTER CONSENT JUDGMENT**

7 17. Each signatory to this Consent Judgment certifies that he or she is fully authorized
8 by the party he or she represents to enter into this Consent Judgment, to execute it on behalf of
9 the party represented and legally to bind that party.

10 **RETENTION OF JURISDICTION**

11 18. The Court shall retain jurisdiction of this matter until the requirements of this
12 Consent Judgment have been fully satisfied.

13 **INTEGRATION**

14 19. This Consent Judgment constitutes the entire agreement between the parties
15 hereto regarding the matters specifically set forth in paragraph 14 herein. This Consent
16 Judgment may not be amended or supplemented except as provided for herein. The parties to
17 this Consent Judgment acknowledge that there are no representations, agreements, or
18 understandings relating to this Consent Judgment other than those expressly contained herein.

19 **AMENDMENTS TO CONSENT JUDGMENT**

20 20. This Consent Judgment may only be amended pursuant to written agreement
21 signed by all of the parties to this Consent Judgment and upon written approval by the Court.

22 **COUNTERPART ORIGINALS**

23 21. This Consent Judgment may be executed in several counterpart originals, all of
24 which taken together shall constitute an integrated document.

25 **EFFECTIVE DATE**

26 22. The Effective Date of this Consent Judgment is the date it is entered by the Court.

27
28 **IT IS SO STIPULATED BY THE PARTIES HERETO:**

1 **IT IS SO STIPULATED BY THE PARTIES HERETO:**

2 Plaintiff PEOPLE OF THE STATE OF CALIFORNIA,
3 EX REL Maureen F. Gorsen (as successor to Edwin F.
4 Lowry), Director, California Department of Toxic Substances
Control

5 Dated: November 8, 2006

By: Original signed by Charles A. McLaughlin
CHARLES A. McLAUGHLIN
Chief, State Oversight and Enforcement Branch
Department of Toxic Substances Control

8 Defendant JOHN WAXLER

9 Dated: November 9, 2006

By: Original signed by John Waxler
JOHN WAXLER

11 Defendant PACIFIC AEROSPACE SERVICES, INC.

13 Dated: November 9, 2006

By: Original signed by John Waxler
JOHN WAXLER
President, Pacific Aerospace Services, Inc.

15 APPROVED AS TO FORM:

BILL LOCKYER
Attorney General
THEODORA BERGER
Senior Assistant Attorney General

18 Dated: November 14, 2006

By: Original signed by Tim Sullivan
TIMOTHY E. SULLIVAN
Deputy Attorney General
Attorneys for Plaintiffs People of the State of California,
ex rel. Maureen F. Gorsen (as successor to Edwin F.
Lowry), Director, Department of Toxic Substances Control

22 Dated: November 28, 2006

By: Original signed by Ralph Swanson
RALPH J. SWANSON
Attorneys for Defendants John Waxler and Pacific
Aerospace Services, Inc.

26 **IT IS ORDERED, ADJUDGED, AND DECREED**

27 Dated: February 8, 2007

Original signed by Jon S. Tigar.
Judge of the Alameda County Superior Court

EXHIBIT A

Exhibit A

CORRECTIVE ACTION REQUIREMENTS

1. INTRODUCTION

1.1. These Corrective Action Requirements are an exhibit to and are incorporated by reference into the Consent Judgment entered into between plaintiffs the People of the State of California, ex rel. Maureen F. Gorsen (as successor to Edwin F. Lowry), Director, Department of Toxic Substances Control ("DTSC"), and defendants John Waxler and Pacific Aerospace Services, Inc. ("Defendants") in settlement of Alameda County Superior Court case number RG04161958.

1.2 The effective date of these Corrective Action Requirements is the same as the effective date of the Consent Judgment.

1.3 The terms used in these Corrective Action Requirements are as defined in the California Code of Regulations, title 22, section 66260.10, except as otherwise provided.

2. WORK TO BE PERFORMED

2.1 Defendants shall perform the work required by these Corrective Action Requirements in a manner consistent with the Health and Safety Code, other applicable state and federal laws and their implementing regulations, and applicable DTSC or the United States Environmental Protection Agency (U.S. EPA) guidance documents. Applicable guidance documents include, but are not limited to, the "RCRA Facility Investigation (RFI) Guidance" (Interim Final, May 1989, EPA 530/SW-89-031) and "Test Methods For Evaluating Solid Waste" (SW-846). All work performed pursuant to these Corrective Action Requirements shall be under the direction and supervision of a professional engineer or registered geologist, registered in California, with expertise in hazardous waste site cleanup. Defendants' contractor or consultant shall have the technical expertise sufficient to fulfill his or her responsibilities.

2.2 These Corrective Action Requirements require the submittal of various documents (such as the Closure Plan, workplans, investigatory reports, and Risk Assessment, among others) for the review and approval of the County of Santa Clara Fire and Environmental Health Departments and/or DTSC. DTSC and Defendants anticipate that after the reviewing agency reviews a submitted document, the reviewing agency may require Defendants to prepare a modified version of the document based on instructions, comments, or guidelines provided by the reviewing agency. Failure by Defendants to submit documents acceptable to the reviewing agency shall be considered a violation of these Corrective Action Requirements unless Defendants prove that they have made a good-faith attempt to revise such documents in accordance with all instructions, comments, and guidelines provided to them by the reviewing agency and have met all deadlines imposed on them by the reviewing agency.

3. CLOSURE PLAN

3.1. Within 30 days of the effective date of this Consent Judgment, Defendants shall hire an Environmental Consultant with the qualifications specified in Paragraph 2.1 and shall prepare a Closure Plan meeting the requirements of the Santa Clara County Fire and Environmental Health Departments. In addition to any other requirements imposed by Santa Clara County, the Closure Plan must address the removal of any remaining hazardous waste or hazardous waste constituents including but not limited to metals, cyanide, volatile organic chemicals, petroleum hydrocarbons and semi-volatile organic chemicals ("Constituent of Concern"). The Closure Plan shall also include the steps necessary to close the wastewater treatment unit authorized under Permit By Rule. The Closure Plan shall also include a plan for soil and soil gas sampling to determine if a release to subsurface soils and groundwater has occurred. This Closure Plan shall be submitted to the County of Santa Clara Fire and Environmental Health Departments with a copy to DTSC.

3.2. Defendants shall begin implementation of the approved Closure Plan within 30 days of receiving approval from the County of Santa Clara.

3.3. If as a result of the Closure Plan implementation, significant subsurface contamination is identified, Santa Clara County will notify Defendants that additional investigation is needed.

4. FACILITY INVESTIGATION (FI)

4.1. Within 30 days of the notification by Santa Clara County that additional investigation is needed, Defendants shall submit an FI Workplan to DTSC. The FI Workplan shall detail the methodology to identify and characterize all sources of contamination; define the nature, degree and extent of contamination; characterize the potential pathways of contaminant migration; identify actual or potential human and/or ecological receptors; and support development of alternatives from which a corrective measure proposal will be proposed. A specific schedule for implementation of all activities shall be included in the FI Workplan. DTSC will review the FI Workplan and notify Defendants in writing regarding DTSC's approval or disapproval.

4.2. Concurrent with the submission of an FI Workplan, Defendants shall submit to DTSC a Health and Safety Plan.

4.3. After DTSC's approval of the FI Workplan, Defendants shall begin the work described in the FI Workplan according to the schedule contained in the FI Workplan and shall thereafter complete the work in a diligent and expeditious manner. Upon completion of the FI, Defendants shall submit an FI Report to DTSC presenting the results of the FI. The FI Report shall set forth the delineation of the lateral and vertical extent of the concentrations of the Constituents of Concern in soil and groundwater at the Facility. The FI Report should evaluate

the risk associated with the concentration of contamination found during the FI. This risk evaluation should follow the methodology outlined in DTSC's Preliminary Endangerment Assessment Manual, the California Human Health Screening Levels prepared by the California Office of Environmental and Human Health, or the United States Environmental Protection Agency, Region IX Preliminary Remediation Goals. DTSC will review the FI Report(s) and notify Defendants in writing of DTSC's approval or disapproval.

5. REMOVAL ACTION (RA)

5.1 DTSC shall evaluate the FI Report and assess the need for Defendants to perform an RA to abate the contamination discovered at the Facility. If DTSC identifies that an RA is needed, Defendants shall submit to DTSC a Workplan for the implementation of a Removal Action ("RA Workplan") within 30 days of such request from DTSC. The RA Workplan is subject to approval by DTSC and shall provide all the measures necessary to remove the contamination.

5.2. Concurrent with the submission of an RA Workplan, Defendants shall submit to DTSC a Health and Safety Plan.

5.3 Concurrent with the submission of an RA Workplan, Defendants shall submit to DTSC a Community Profile for DTSC approval. Based on the information provided in the Community Profile, if DTSC determines that there is a high level of community concern about the Pacific Aerospace Facility, DTSC may require Defendants to prepare a Public Participation Plan.

5.4. Upon DTSC's approval of the RA Workplan, Defendants shall submit a Fact Sheet to DTSC that summarizes the findings of the FI Report and describes the measures to be taken to remove the contamination from the Facility. DTSC will review the RA Fact Sheet and notify Defendants in writing of DTSC's approval or disapproval, including any comments and/or modifications. When DTSC approves the RA Fact Sheet, Defendants shall mail the approved RA Fact Sheet to all individuals on a Pacific Aerospace Facility mailing list that complies with California Code of Regulations, title 22, section 66271.9, subdivision (c)(1)(D), within 15 calendar days of receipt of written approval.

5.5 After DTSC's approval of the RA Workplan, Defendants shall begin the work described in the RA Workplan according to the schedule contained in the RA Workplan and shall thereafter complete the work in a diligent and expeditious manner. Upon completion of the RA, Defendants shall submit an RA Report presenting the results of the implementation of the RA Workplan for DTSC's approval.

5.6. If at any time Defendants identify an immediate or potential threat to human health and/or the environment, discover new releases of hazardous waste and/or hazardous waste constituents, or discover new solid waste management units not previously identified, Defendants shall notify the DTSC Project Coordinator orally within 48 hours of discovery, and shall provide written notification to DTSC within 3 days of discovery summarizing the findings, including the

immediacy and magnitude of the potential threat to human health and/or the environment.

6. RISK ASSESSMENT

6.1. If required by DTSC, Defendants shall conduct a Risk Assessment to evaluate actual and/or potential human health and ecological risk and to establish site-specific action levels and cleanup standards to address those Constituents of Concern that remain at the Facility after the Removal Action. If DTSC determines that a Risk Assessment is required, Respondent shall submit to DTSC for approval a Risk Assessment Workplan within 60 days of receipt of DTSC's determination. DTSC shall review the Risk Assessment Workplan and notify Defendants in writing of DTSC's approval or disapproval. Defendants shall submit to DTSC for approval a Risk Assessment Report in accordance with the DTSC-approved Risk Assessment Workplan schedule. DTSC shall review the Risk Assessment Report and notify Defendants in writing of DTSC's approval or disapproval.

7. CORRECTIVE MEASURES PROPOSAL (CMP)

7.1. If the Risk Assessment identifies that a significant risk remains at the Facility due to the residual contamination left after the FI Report or Removal Action, within 60 days of receiving such a request from DTSC, Defendants shall propose to DTSC for DTSC's approval a CMP which describes in detail the corrective measures proposed to protect human health and the environment from the remaining Constituents of Concern. The CMP must include (1) a description of corrective measures implemented at the Facility since the effective date of this Consent Agreement, (2) an explanation of how the proposed corrective measures are consistent with the FI Report, the Risk Assessment (if required by DTSC), applicable state and federal laws, their implementing regulations, and applicable DTSC and United States Environmental Protection Agency guidance, (3) proposed clean up objectives and points of compliance, and (4) a detailed description and schedule to construct and implement the corrective measures. The CMP shall also provide the basis and justification for these decisions. If requested by DTSC, Defendants shall prepare, as part of the CMP, treatability or pilot studies for the proposed corrective measures that involve treatment or a demonstration of the effectiveness of the proposed corrective measures, unless Defendants can demonstrate to DTSC's satisfaction that such studies are not needed. The workplan for such studies shall include, at a minimum, the conceptual design, a schedule for conducting the studies, or, alternatively, Defendants' justification for not conducting the studies.

8. REMEDY SELECTION

8.1. DTSC will provide the public with an opportunity to review and comment on the final draft of the CMS Report, DTSC's proposed corrective measures for the Pacific Aerospace Facility, and DTSC's justification for selection of such corrective measures.

8.2. Following the public comment period, DTSC may select final corrective measures or require Defendants to revise the CMP.

8.3. DTSC will notify Defendants of the final corrective measures selected by DTSC in the Final Decision and Response to Comments. The notification will include DTSC's reasons for selecting the corrective measures.

8.4. Within 60 days of Defendants' receipt of notification of DTSC's selection of the corrective measures, Defendants shall submit to DTSC a Corrective Measures Implementation (CMI) Workplan. The CMI Workplan is subject to approval by DTSC.

8.5. Concurrent with the submission of a CMI Workplan, Defendants shall submit to DTSC a Health and Safety Plan.

8.6. Concurrent with the submission of a CMI Workplan, Defendants shall submit to DTSC a Community Profile for DTSC. Based on the information provided in the Community Profile, if DTSC determines that there is a high level of community concern about the Pacific Aerospace Facility, DTSC may require Defendants to prepare a Public Participation Plan.

8.7. The CMI program shall be designed to facilitate the design, construction, operation, maintenance, and monitoring of corrective measures at the Pacific Aerospace Facility. In accordance with the schedule contained in the approved CMI Workplan, Defendants shall submit to DTSC the documents listed below.

- Operation and Maintenance Plan
- Draft Plans and Specifications
- Final Plans and Specifications
- Construction Workplan
- Construction Completion Report
- Corrective Measures Completion Report

8.8. DTSC will review all required CMI documents and notify Defendants in writing of DTSC's approval or disapproval.

8.9. As directed by DTSC, within 90 days of DTSC's approval of all required CMI documents, Defendants shall establish a financial assurance mechanism for Corrective Measures Implementation. The financial assurance mechanisms may include any mechanism described in California Code of Regulations, title 22, section 66265.143, subdivisions (a), (b), (c), or (d). The mechanism shall be established to allow DTSC access the funds to undertake Corrective Measures Implementation tasks if Defendants is unable or unwilling to undertake the required actions.

9. OTHER REQUIREMENTS AND PROVISIONS

9.1. Compliance Notification and Project Coordinator: Within 14 days of the effective date of these Corrective Action Requirements, DTSC and Defendants shall each designate a Project Coordinator and shall notify each other in writing of the Project Coordinator selected. Each Project Coordinator shall be responsible for overseeing the implementation of these

Corrective Action Requirements and for designating a person to act in his/her absence. All communications between Defendants and DTSC, and all documents, report approvals, and other correspondence concerning the activities performed pursuant to these Corrective Action Requirements shall be directed through the Project Coordinators. Each party may change its Project Coordinator with at least seven (7) days prior written notice.

9.2. Department Approval.

9.2.1. Defendants shall revise any workplan, report, specification, or schedule in accordance with DTSC's written comments. Defendants shall submit to DTSC any revised documents by the due date specified by DTSC. Revised submittals are subject to DTSC's approval or disapproval.

9.2.2. Upon receipt of DTSC's written approval, Defendants shall commence work and implement any approved workplan in accordance with the schedule and provisions contained therein.

9.2.3. Any Department approved workplan, report, specification, or schedule required by these Corrective Action Requirements shall be deemed incorporated into these Corrective Action Requirements.

9.2.4. Verbal advice, suggestions, or comments given by DTSC representatives will not constitute an official approval or decision.

10. SUBMITTALS

10.1. Beginning with the first full month following the effective date of these Corrective Action Requirements, Defendants shall provide DTSC with monthly progress reports of corrective action activities conducted pursuant to these Corrective Action Requirements. Progress reports are due on the tenth day of the following month. DTSC may adjust the frequency of progress reporting to be consistent with site-specific activities.

10.2. Any report or other document submitted by Defendants pursuant to these Corrective Action Requirements shall be signed and certified by the project coordinator, a responsible corporate officer, or a duly authorized representative.

10.3. The certification required above, shall be in the following form:

I certify that the information contained in or accompanying this submittal is true, accurate, and complete. As to those portions of this submittal for which I cannot personally verify the accuracy, I certify that this submittal and all attachments were prepared at my direction in accordance with procedures designed to assure that qualified personnel properly gathered and evaluated the information submitted.

Signature: _____

Name: _____

Title: _____
Date: _____

10.4. Defendants shall provide two copies of all documents, including but not limited to, workplans, reports, and correspondence of 15 pages or longer. Submittals specifically exempted from this copy requirement are all progress reports and correspondence of less than 15 pages, of which one copy is required.

10.5. Unless otherwise specified, all reports, correspondence, approvals, disapprovals, notices, or other submissions relating to these Corrective Action Requirements shall be in writing and shall be sent to the current Project Coordinators.

10.6. Proposed Contractor/Consultant: All work performed pursuant to these Corrective Action Requirements shall be under the direction and supervision of a professional engineer or registered geologist, registered in California, with expertise in hazardous waste site cleanup. Defendants' contractor or consultant shall have the technical expertise sufficient to fulfill his or her responsibilities. Within 21 days of the effective date of these Corrective Action Requirements, Defendants shall notify the DTSC Project Coordinator in writing of the name, title, and qualifications of the professional engineer or registered geologist, and of any contractors or consultants and their personnel to be used in carrying out the requirements of these Corrective Action Requirements. DTSC may disapprove of Defendants' contractor and/or consultant.

10.7. Quality Assurance.

10.7.1. All sampling and analyses performed by Defendants under these Corrective Action Requirements shall follow applicable Department and U.S. EPA guidance for sampling and analysis. Workplans shall contain quality assurance/quality control and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the approved workplans must be approved by DTSC prior to implementation, must be documented, including reasons for the deviations, and must be reported in the applicable report.

10.7.2. The names, addresses, and telephone numbers of the California State certified analytical laboratories Defendants proposes to use must be specified in the applicable workplans.

10.7.3. All workplans required under these Corrective Action Requirements shall include data quality objectives for each data collection activity to ensure that data of known and appropriate quality are obtained, and that data are sufficient to support their intended uses.

10.7.4. Defendants shall monitor to ensure that high-quality data are obtained by its consultant or contract laboratories. Defendants shall ensure that laboratories used by Defendants for analysis perform such analysis according to the latest approved edition of "Test Methods for Evaluating Solid Waste, (SW-846)," or other methods deemed satisfactory to DTSC. If methods other than U.S. EPA methods are to be used, Defendants shall specify all

such protocols in the applicable workplan (e.g., FI Workplan). DTSC may reject any data that do not meet the requirements of the approved workplan, U.S. EPA analytical methods, or quality assurance/quality control procedures, and may require resampling and analysis.

10.7.5. Defendants shall ensure that the California State certified laboratories used by Defendants for analyses have a quality assurance/quality control program. DTSC may conduct a performance and quality assurance/quality control audit of the laboratories chosen by Defendants before, during, or after sample analyses. Upon request by DTSC, Defendants shall have its selected laboratory perform analyses of samples provided by DTSC to demonstrate laboratory performance. If the audit reveals deficiencies in a laboratory's performance or quality assurance/quality control procedures, resampling and reanalysis may be required.

11. SAMPLING AND DATA/DOCUMENT AVAILABILITY

11.1. Defendants shall submit to DTSC, upon request, the results of all sampling and/or tests or other data generated by its employees, agents, consultants, or contractors pursuant to these Corrective Action Requirements.

11.2. Notwithstanding any other provisions of these Corrective Action Requirements, DTSC retains all of its information gathering and inspection authority and rights, including enforcement actions related thereto, under the Health and Safety Code, and any other state or federal statutes or regulations.

11.3. Defendants shall notify DTSC in writing at least seven (7) days prior to beginning each separate phase of field work approved under any workplan required by these Corrective Action Requirements. If Defendants believe they must commence emergency field activities without delay, Defendants may seek emergency telephone authorization from the DTSC Project Coordinator or, if the Project Coordinator is unavailable, his/her Branch Chief, to commence such activities immediately.

11.4. At the request of DTSC, Defendants shall provide DTSC with, or allow DTSC or its authorized representative to take, split or duplicate samples of all samples collected by Defendants pursuant to these Corrective Action Requirements. Similarly, at the request of Defendants, DTSC shall allow Defendants or their authorized representative to take split or duplicate samples of all samples collected by DTSC under these Corrective Action Requirements.

12. ACCESS

12.1. Defendants shall provide DTSC and its representatives access to the Pacific Aerospace Facility, and any other property to which access is required for implementation of these Corrective Action Requirements, at all reasonable times, and shall permit such persons to inspect and copy all records, files, photographs, and documents, including all sampling and monitoring data, that pertain to work undertaken pursuant to these Corrective Action Requirements, and that are within the possession or under the control of Defendants or their

contractors or consultants.

12.2. To the extent that work being performed pursuant to these Corrective Action Requirements must be done beyond the Pacific Aerospace Facility property boundary, Defendants shall use their best efforts to obtain from the present owners of such property access agreements necessary to complete work required by these Corrective Action Requirements within 30 days of approval of any workplan for which access is required. Best efforts as used in this paragraph shall include, at a minimum, a letter by certified mail from the Defendants to the present owners of such property requesting an agreement to permit Defendants and DTSC and its authorized representative's access to such property, and offering the payment by Defendants of reasonable sums of money in consideration of granting access. Any such access agreement shall provide for access to DTSC and its representatives. Defendants shall provide DTSC's Project Coordinator with a copy of any access agreements. In the event that an agreement for access is not obtained within 30 days of approval of any workplan for which access is required, or of the date that the need for access becomes known to Defendants, Defendants shall notify DTSC in writing within 14 days thereafter regarding both the efforts undertaken to obtain access, and its failure to obtain such agreements. DTSC may, at its discretion, assist Defendants in obtaining access.

12.3. Nothing in this section limits or otherwise affects DTSC's right of access and entry pursuant to any applicable state or federal law or regulation.

12.4. Nothing in these Corrective Action Requirements shall be construed to limit or otherwise affect Defendants' liability and obligation to perform corrective action including corrective action beyond the Pacific Aerospace Facility boundary.

13. RECORD RETENTION

13.1. Defendants shall retain, during the implementation of these Corrective Action Requirements and for a minimum of six (6) years thereafter, all data, records, and documents that relate in any way to the implementation of these Corrective Action Requirements, or to hazardous waste management and/or disposal at the Pacific Aerospace Facility. Defendants shall notify DTSC in writing 90 days prior to the destruction of any such records, and shall provide DTSC with the opportunity to take possession of any such records. Such written notification shall reference "People v. Pacific Aerospace Services, Inc., Alameda County Superior Court case no. RG04161958," and shall be addressed to:

Stephen W. Lavinger, Chief
Tiered Permitting Corrective Action Branch
Permitting and Corrective Action Division
Department of Toxic Substances Control
Southern California Region
5796 Corporate Avenue
Cypress, California 90630

A photocopy of the written notification shall be sent to:

Charles A. McLaughlin, Chief
State Oversight and Enforcement Branch
Statewide Compliance Division
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

13.2. If Defendants retain or employ any agent, consultant, or contractor for the purpose of complying with the requirements of these Corrective Action Requirements, Defendants will require any such agents, consultants, or contractors to provide Defendants a copy of all documents produced pursuant to these Corrective Action Requirements.

13.3. All documents pertaining to these Corrective Action Requirements shall be stored in a central location under the control of Defendants to afford ease of access by DTSC and its representatives.

13.4. Change in Ownership. No change in ownership or corporate or partnership status relating to the Pacific Aerospace Facility shall in any way alter Defendants' responsibility under these Corrective Action Requirements. No conveyance of title, easement, or other interest in the Pacific Aerospace Facility, or a portion of the Pacific Aerospace Facility, shall affect Defendants' obligations under these Corrective Action Requirements. Unless DTSC agrees that such obligations may be transferred to a third party, Defendants shall be responsible for, and liable for, any failure to carry out all activities required of Defendants by the terms and conditions of these Corrective Action Requirements, regardless of Defendants' use of employees, agents, contractors, or consultants to perform any such tasks.

13.5. Notice to Contractors and Successors. Defendants shall provide a copy of these Corrective Action Requirements to all contractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to these Corrective Action Requirements, and shall condition all such contracts on compliance with the terms of these Corrective Action Requirements. Defendants shall give written notice of these Corrective Action Requirements to any successor in interest prior to transfer of ownership or operation of the Pacific Aerospace Facility, and shall notify DTSC at least seven days prior to such transfer.

13.6. Compliance with Applicable Laws. All actions required to be taken pursuant to these Corrective Action Requirements shall be undertaken in accordance with the applicable requirements of all local, state, and federal laws and regulations. Defendants shall obtain, or cause its representatives to obtain, all permits and approvals necessary under such laws and regulations.

13.7. Costs. Defendants are liable for all costs associated with the implementation of these Corrective Action Requirements, including all costs incurred by DTSC in overseeing the work required by these Corrective Action Requirements.

14. REIMBURSEMENT OF DTSC'S COSTS

14.1. Defendants shall pay DTSC's costs incurred in the implementation of this Consent Agreement.

14.2. Defendants shall reimburse DTSC for all costs pursuant to Health and Safety Code Division 20, Chapter 6.66.

14.3. DTSC will provide Defendants with a billing statement at least quarterly, which will include the name(s) of the employee(s), identification of the activities, the amount of time spent on each activity, and the hourly rate charged. If Defendants do not pay an invoice within 60 days of the date of the billing statement, the amount may be subject to interest as provided by Health and Safety Code section 25360.1.

14.4. DTSC will retain all costs records associated with the work performed under this Consent Judgment. DTSC will make all documents that support the DTSC's cost determination available for inspection upon request, as provided by the Public Records Act.

14.5. DTSC reserves its right to recover unpaid costs under applicable state and federal laws.

14.6. All payments shall be made within 30 days of the date of the billing statement by check payable to the Department of Toxic Substances Control and shall be sent to:

Accounting Unit
Department of Toxic Substances Control
P. O. Box 806
Sacramento, California 95812-0806

All checks shall reference the name of the Facility, Defendants' name and address, and the docket number of this Consent Judgment. Copies of all checks and letters transmitting such checks shall be sent simultaneously to DTSC's Project Coordinator.

15. ENDANGERMENT DURING IMPLEMENTATION.

15.1 In the event that DTSC determines that any circumstances or activity (whether or not pursued in compliance with these Corrective Action Requirements) are creating an imminent or substantial endangerment to the health or welfare of people at the Pacific Aerospace Facility, or in the surrounding area, or to the environment, DTSC may order Defendants to stop further implementation of these Corrective Action Requirements for such period of time as needed to abate the endangerment. Any deadline in these Corrective Action Requirements directly affected by an Order to Stop Work under this section shall be extended for the term of the Order to Stop Work.

16. LIABILITY

16.1. Nothing in these Corrective Action Requirements shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Defendants, other than as set forth in the Consent Judgment to which these Corrective Action Requirements are an exhibit. Notwithstanding compliance with the terms of these Corrective Action Requirements, Defendants may be required to take further actions as are necessary to protect public health or welfare or the environment.

16.2. Government Liabilities. The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Defendants or related parties specified in section 3.17 in carrying out activities pursuant to these Corrective Action Requirements, nor shall the State of California be held as a party to any contract entered into by Defendants or their agents in carrying out activities pursuant to these Corrective Action Requirements.

16.3. Incorporation of Plans and Reports. All plans, schedules, and reports that require Department approval and are submitted by Defendants pursuant to these Corrective Action Requirements are incorporated in these Corrective Action Requirements upon approval by DTSC.

16.4. Parties Bound. These Corrective Action Requirements shall apply to and be binding upon Defendants, and their officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations.

16.5. Compliance with Waste Discharge Requirements. Defendants shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board.

16.6. Submittal Summary. Below is a summary of the major reporting requirements contained in these Corrective Action Requirements. The summary is provided as a general guide and does not contain all requirements. Please refer to the specific language of these Corrective Action Requirements for all the requirements.

Section	Action	Due Date
9.1	Designate Project Coordinator and notify DTSC in writing	14 days from effective date
10.6	Notify DTSC in writing of contractors to carry out terms of Corrective Action Requirements	21 days from effective date
3.1	Submit Closure Plan to Santa Clara County	30 days from effective date
3.2	Implement Closure Plan	30 days after Santa Clara County approval
4.1, 4.2	Submit Facility Investigation Workplan and Health and Safety Plan to DTSC	30 days after notification from Santa Clara County that additional investigation is needed.
5.1, 5.2, 5.3	Submit RA Workplan, Health and Safety Plan, and Community Profile to DTSC	30 days from request by DTSC
6.1	Submit Risk Assessment Workplan to DTSC	60 days from determination by DTSC that Risk Assessment is needed
7.1	Submit Corrective Measures Proposal	60 days from request from DTSC
8.4	Submit Corrective Measures Implementation Workplan, Community Profile and Health and Safety Plan	60 days from notification that DTSC has selected corrective measures.
8.9	Establish financial assurance mechanism.	90 days from DTSC's approval of all Corrective Measures Implementation documents
2.6	Submit CMI Workplan	60 days from receipt of notification of DTSC selection of a corrective measure
10.1	Submit first Progress Report	Beginning with first full month following the effective date, and thereafter on the tenth of each month
5.6	Notify DTSC orally of potential threats to human health	48 hours after discovery
5.6	Notify DTSC in writing of potential threats to human health	3 days after discovery
11.3	Notify DTSC of when field work starts	7 days before each phase of field work